

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues)
Against:)**

AGUSTIN MORALES)

Case No. 800-2017-034436)

Applicant)
_____)

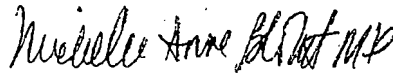
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 23, 2019.

IT IS SO ORDERED: May 16, 2019.

MEDICAL BOARD OF CALIFORNIA



**Michelle Anne Bholat, M.D., Vice Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 SARAH J. JACOBS
Deputy Attorney General
4 State Bar No. 255899
California Department of Justice
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8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Statement of Issues
Against:

14 **AGUSTIN MORALES**

15 Applicant.

Case No. 800-2017-034436

OAH No. 2018090461

16 **STIPULATED SETTLEMENT AND**
17 **DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Sarah J. Jacobs,
24 Deputy Attorney General.

25 2. Applicant Agustin Morales (Applicant) is represented in this proceeding by attorney
26 Bradley M. Wishek, whose address is: 765 University Avenue, Sacramento, CA 95825.

27 3. On or about June 14, 2016, Applicant filed an application dated April 7, 2016, with
28 the Medical Board of California to obtain a Physician's and Surgeon's Certificate.

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1 probation; all of the charges and allegations contained in Statement of Issues No. 800-2017-
2 034436 shall be deemed true, correct and fully admitted by Applicant for purposes of that
3 proceeding or any other licensing proceeding involving Applicant in the State of California.

4 11. Applicant agrees that his Physician's and Surgeon's Certificate is subject to denial
5 and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

8 12. This stipulation shall be subject to approval by the Medical Board of California.
9 Applicant understands and agrees that counsel for Complainant and the staff of the Medical
10 Board of California may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Applicant or his counsel. By signing the
12 stipulation, Applicant understands and agrees that he may not withdraw his agreement or seek to
13 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to
14 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
15 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
16 between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
19 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
20 signatures thereto, shall have the same force and effect as the originals.

21 14. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Applicant Agustin Morales' application for a full and
26 unrestricted Physician's and Surgeon's Certificate is denied. However, Applicant shall be issued
27 a probationary license for five (5) years on the condition that Applicant successfully completes an
28 ACGME-approved postgraduate residency training program within four (4) years of the date of

1 this Order. Applicant's first two years of practice shall be successfully performed in an ACGME-
2 approved residency program. Any period of probation not in a residency or fellowship program
3 shall be under the supervision of a monitor as further described below.

4 1. PROHIBITED PRACTICE. During the first two years of probation, Applicant is
5 prohibited from practicing medicine outside of an ACGME-approved postgraduate residency
6 program.

7 2. MONITORING - PRACTICE. Within 30 calendar days of Applicant's successful
8 completion of an ACGME-approved residency or fellowship program, Applicant shall submit to
9 the Board or its designee for prior approval as a practice monitor, the name and qualifications of
10 one or more licensed physicians and surgeons whose licenses are valid and in good standing, and
11 who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall
12 have no prior or current business or personal relationship with Applicant, or other relationship
13 that could reasonably be expected to compromise the ability of the monitor to render fair and
14 unbiased reports to the Board, including but not limited to any form of bartering, shall be in
15 Applicant's field of practice, and must agree to serve as Applicant's monitor. Applicant shall pay
16 all monitoring costs.

17 The Board or its designee shall provide the approved monitor with copies of the Decision
18 and Statement of Issues, and a proposed monitoring plan. Within 15 calendar days of receipt of
19 the Decision, Statement of Issues, and proposed monitoring plan, the monitor shall submit a
20 signed statement that the monitor has read the Decision and Statement of Issues, fully understands
21 the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor
22 disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan
23 with the signed statement for approval by the Board or its designee.

24 Within 60 calendar days of Applicant's successful completion of ACGME-approved
25 residency programs, and continuing throughout probation, Applicant's practice shall be
26 monitored by the approved monitor. Applicant shall make all records available for immediate
27 inspection and copying on the premises by the monitor at all times during business hours and
28 shall retain the records for the entire term of probation.

1 If Applicant fails to obtain approval of a monitor within 60 calendar days of successful
2 completion of an ACGME-approved residency programs, Applicant shall receive a notification
3 from the Board or its designee to cease the practice of medicine within three (3) calendar days
4 after being so notified. Applicant shall cease the practice of medicine until a monitor is approved
5 to provide monitoring responsibility.

6 The monitor(s) shall submit a quarterly written report to the Board or its designee which
7 includes an evaluation of Applicant's performance, indicating whether Applicant's practices are
8 within the standards of practice of medicine and whether Applicant is practicing medicine safely,
9 billing appropriately or both. It shall be the sole responsibility of Applicant to ensure that the
10 monitor submits the quarterly written reports to the Board or its designee within 10 calendar days
11 after the end of the preceding quarter.

12 If the monitor resigns or is no longer available, Applicant shall, within 5 calendar days of
13 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
14 name and qualifications of a replacement monitor who will be assuming that responsibility within
15 15 calendar days. If Applicant fails to obtain approval of a replacement monitor within 60
16 calendar days of the resignation or unavailability of the monitor, Applicant shall receive a
17 notification from the Board or its designee to cease the practice of medicine within three (3)
18 calendar days after being so notified. Applicant shall cease the practice of medicine until a
19 replacement monitor is approved and assumes monitoring responsibility.

20 In lieu of a monitor, Applicant may participate in a professional enhancement program
21 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
22 review, semi-annual practice assessment, and semi-annual review of professional growth and
23 education. Applicant shall participate in the professional enhancement program at Applicant's
24 expense during the term of probation.

25 3. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
26 Applicant shall provide a true copy of this Decision and Statement of Issues to the Chief of Staff
27 or the Chief Executive Officer at every hospital where privileges or membership are extended to
28 Applicant, at any other facility where Applicant engages in the practice of medicine, including all

1 physician and locum tenens registries or other similar agencies, and to the Chief Executive
2 Officer at every insurance carrier which extends malpractice insurance coverage to Applicant.
3 Applicant shall submit proof of compliance to the Board or its designee within 15 calendar days.

4 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5 4. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
6 NURSES. During probation, Applicant is prohibited from supervising physician assistants and
7 advanced practice nurses.

8 5. OBEY ALL LAWS. Applicant shall obey all federal, state and local laws, all rules
9 governing the practice of medicine in California and remain in full compliance with any court
10 ordered criminal probation, payments, and other orders.

11 6. QUARTERLY DECLARATIONS. Applicant shall submit quarterly declarations
12 under penalty of perjury on forms provided by the Board, stating whether there has been
13 compliance with all the conditions of probation.

14 Applicant shall submit quarterly declarations not later than 10 calendar days after the end of
15 the preceding quarter.

16 7. GENERAL PROBATION REQUIREMENTS.

17 Compliance with Probation Unit

18 Applicant shall comply with the Board's probation unit.

19 Address Changes

20 Applicant shall, at all times, keep the Board informed of Applicant's business and residence
21 addresses, email address (if available), and telephone number. Changes of such addresses shall
22 be immediately communicated in writing to the Board or its designee. Under no circumstances
23 shall a post office box serve as an address of record, except as allowed by Business and
24 Professions Code section 2021(b).

25 Place of Practice

26 Applicant shall not engage in the practice of medicine in Applicant's or patient's place of
27 residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

28 License Renewal

1 Applicant shall maintain a current and renewed California physician's and surgeon's
2 license.

3 Travel or Residence Outside California

4 Applicant shall immediately inform the Board or its designee, in writing, of travel to any
5 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
6 (30) calendar days.

7 In the event Applicant should leave the State of California to reside or to practice,
8 Applicant shall notify the Board or its designee in writing 30 calendar days prior to the dates of
9 departure and return.

10 8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Applicant shall be
11 available in person upon request for interviews either at Applicant's place of business or at the
12 probation unit office, with or without prior notice throughout the term of probation.

13 9. NON-PRACTICE WHILE ON PROBATION. Applicant shall notify the Board or its
14 designee in writing within 15 calendar days of any periods of non-practice lasting more than 30
15 calendar days and within 15 calendar days of Applicant's return to practice. Non-practice is
16 defined as any period of time Applicant is not practicing medicine as defined in Business and
17 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
18 patient care, clinical activity or teaching, or other activity as approved by the Board. If Applicant
19 resides in California and is considered to be in non-practice, Applicant shall comply with all
20 terms and conditions of probation. All time spent in an intensive training program which has
21 been approved by the Board or its designee shall not be considered non-practice and does not
22 relieve Applicant from complying with all the terms and conditions of probation. Practicing
23 medicine in another state of the United States or Federal jurisdiction while on probation with the
24 medical licensing authority of that state or jurisdiction shall not be considered non-practice. A
25 Board-ordered suspension of practice shall not be considered as a period of non-practice.

26 In the event Applicant's period of non-practice while on probation exceeds 18 calendar
27 months, Applicant shall successfully complete the Federation of State Medical Boards Special
28 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program

1 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
2 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

3 Applicant's period of non-practice while on probation shall not exceed two (2) years.

4 Periods of non-practice will not apply to the reduction of the probationary term.

5 Periods of non-practice for an Applicant residing outside of California will relieve
6 Applicant of the responsibility to comply with the probationary terms and conditions with the
7 exception of this condition and the following terms and conditions of probation: Obey All Laws;
8 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
9 Controlled Substances; and Biological Fluid Testing.

10 10. COMPLETION OF PROBATION. Applicant shall comply with all financial
11 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
12 completion of probation. Upon successful completion of probation, Applicant's certificate shall
13 be fully restored.

14 11. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
15 of probation is a violation of probation. If Applicant violates probation in any respect, the Board,
16 after giving Applicant notice and the opportunity to be heard, may revoke probation and carry out
17 the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an
18 Interim Suspension Order is filed against Applicant during probation, the Board shall have
19 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
20 the matter is final.

21 12. LICENSE SURRENDER. Following the effective date of this Decision, if Applicant
22 ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms
23 and conditions of probation, Applicant may request to surrender his or her license. The Board
24 reserves the right to evaluate Applicant's request and to exercise its discretion in determining
25 whether or not to grant the request, or to take any other action deemed appropriate and reasonable
26 under the circumstances. Upon formal acceptance of the surrender, Applicant shall within 15
27 calendar days deliver Applicant's wallet and wall certificate to the Board or its designee and
28 Applicant shall no longer practice medicine. Applicant will no longer be subject to the terms and

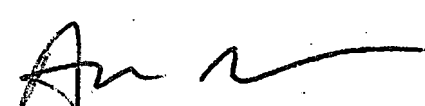
1 conditions of probation. If Applicant re-applies for a medical license, the application shall be
2 treated as a petition for reinstatement of a revoked certificate.

3 13. PROBATION MONITORING COSTS. Applicant shall pay the costs associated with
4 probation monitoring each and every year of probation, as designated by the Board, which may be
5 adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and
6 delivered to the Board or its designee no later than January 31 of each calendar year.

7 ACCEPTANCE

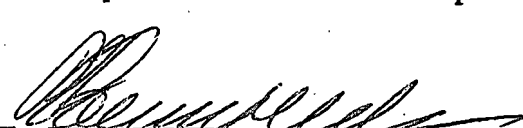
8 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
9 discussed it with my attorney, Bradley M. Wishek. I understand the stipulation and the effect it
10 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
11 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
12 Decision and Order of the Medical Board of California.

13
14 DATED: 1/28/19


15 AGUSTIN MORALES
Applicant

16 I have read and fully discussed with Applicant Agustin Morales the terms and conditions
17 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
18 its form and content.

19 DATED: 1-28-19


20 BRADLEY M. WISHEK
Attorney for Applicant

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Dated: 1-29-2019

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

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Exhibit A

Statement of Issues No. 800-2017-034436

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 14 20 18
BY K. Voong ANALYST

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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. 800-2017-034436

AGUSTIN MORALES
155 N. Fresno Street
Fresno, CA 93701

STATEMENT OF ISSUES

Applicant.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about June 14, 2016, the Medical Board of California, Department of Consumer Affairs received an application for a Physician's and Surgeon's Certificate from Agustin Morales (Applicant). On or about April 7, 2016, Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

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3. On or about June 19, 2017, the Medical Board of California, Department of Consumer Affairs received an updated application for a Physician's and Surgeon's Certificate from Applicant. On or about June 1, 2017, Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the updated application.

4. On or about November 13, 2017, the Board denied Applicant's application.

5. On or about January 2, 2018, Applicant requested an administrative hearing to contest the denial of his application.

JURISDICTION

6. This Statement of Issues is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

7. Section 475 of the Code states in pertinent part, that:

“(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

“ ”
• • •

“(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.”

8. Section 480 of the Code states:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

“ . . .

“(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

“(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

“ ”

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1 9. Section 2221 of the Code states:

2 “(a) The board may deny a Physician’s and Surgeon’s Certificate or postgraduate training
3 authorization letter to an applicant guilty of unprofessional conduct or of any cause that would
4 subject a licensee to revocation or suspension of his or her license. The board in its sole
5 discretion, may issue a probationary Physician’s and Surgeon’s Certificate to an applicant subject
6 to terms and conditions, including, but not limited to, any of the following conditions of
7 probation:

8 “(1) Practice limited to a supervised, structured environment where the licensee’s
9 activities shall be supervised by another physician and surgeon.

10 “(2) Total or partial restrictions on drug prescribing privileges for controlled
11 substances.

12 “(3) Continuing medical or psychiatric treatment.

13 “(4) Ongoing participation in a specified rehabilitation program.

14 “(5) Enrollment and successful completion of a clinical training program.

15 “(6) Abstention from the use of alcohol or drugs.

16 “(7) Restrictions against engaging in certain types of medical practice.

17 “(8) Compliance with all provisions of this chapter.

18 “(9) Payment of the cost of probation monitoring.

19 “(b) The board may modify or terminate the terms and conditions imposed on the
20 probationary certificate upon receipt of a petition from the licensee. The board may assign the
21 petition to an administrative law judge designated in Section 11371 of the Government Code.
22 After a hearing on the petition, the administrative law judge shall provide a proposed decision to
23 the board.

24 “... ”

25 “(d) An applicant shall not be eligible to reapply for a Physician’s and Surgeon’s Certificate
26 for a minimum of three years from the effective date of the denial of his or her application, except
27 that the board may, in its discretion and for good cause demonstrated, permit reapplication after
28 not less than one year has elapsed from the effective date of the denial.”

10. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“ . . .

“(d) Incompetence.

“ ”

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

11. Applicant's application is subject to denial under section 475, subdivision (a)(4), section 480, subdivision (a)(3), section 2221, and section 2234, subdivision (a), on the grounds that Applicant has demonstrated conduct which, if done by a licentiate, would be grounds for suspension or revocation of a license, i.e., unprofessional conduct and/or conduct which indicates an unfitness to practice medicine. The circumstances are as follows:

12. The Board received an application for a Physician's and Surgeon's Certificate from Applicant, dated April 7, 2016. In the application, Applicant answered "no" to questions 25, 28, 29 and 31, all of which questions were contained in a section of the application with the heading "Unusual Circumstances During Postgraduate Training" and dealt with Applicant's having taken leaves of absence or breaks from training, being placed on probation for any reason, being disciplined or placed under investigation, and the use of limitations or special requirements put in place for clinical performance, professionalism, medical knowledge, discipline or for any other reason.

13. On or about June 9, 2017, subsequent to receipt of Applicant's application for licensure, the Board received a Certificate of Completion of Accreditation Council for Graduate Medical Education (ACGME) Postgraduate Training and letter from the internal medicine residency program (Program) in which Applicant was enrolled. The letter provided that

1 Applicant's Post Graduate Year 1 (PGY-1) residency in internal medicine began on June 22,
2 2015. In the letter, the Program answered "yes" to questions 1, 2, 4, and 6, all of which were
3 contained within the heading "Unusual Circumstances" and dealt with Applicant's receiving
4 partial or no credit during his training, taking a leave of absence or break from the program, being
5 placed on probation, and the use of limitations or special requirements placed upon Applicant
6 related to clinical performance, professionalism, medical knowledge, discipline, or for any other
7 reason.

8 14. On or about January 30, 2017, the Program placed Applicant on academic
9 remediation. The Program's Clinical Competency Committee (CCC) concluded that it was
10 necessary to place Applicant on remediation due to Applicant's failure to demonstrate the clinical
11 skills expected of a beginning PGY-2 resident. The CCC expressed concern about Applicant's
12 medical knowledge, lack of sense of urgency, lack of confidence, inability to formulate
13 independent assessments and plan related to patient care, insufficient effort to obtain relevant and
14 accurate patient information, reassuring patients with incorrect information and providing false
15 information during presentations to his attending physicians.

16 15. On or about May 26, 2017 through June 4, 2017, after learning that he would be
17 placed on probation, Applicant took a leave of absence from the Program.

18 16. On or about June 1, 2017, Applicant submitted an updated application for a
19 Physician's and Surgeon's Certificate to the Board and certified under penalty of perjury to the
20 truthfulness of all statements, answers, and representations in the application.

21 17. On or about June 7, 2017, Applicant was placed on academic probation for six
22 months. The Program prohibited Applicant from working night shifts while on probation, and
23 required him to staff all admissions cases with his attending faculty the same day the patients
24 were treated. The CCC expressed concern about Applicant's failure to demonstrate the clinical
25 skills expected of a beginning PGY-2, failure to progress on academic remediation, and patient
26 safety concerns that necessitate additional supervision and a modified resident schedule beyond
27 the supervision typically required of a PGY-2. Applicant was removed from clinical or direct
28 patient care effective June 30, 2017.

1 18. On or about June 12, 2017, Applicant submitted to the Board a form entitled
2 "Explanation for Application Question." The form related to question 31, which was contained
3 within the heading "Unusual Circumstances," and dealt with Applicant's having any limitations
4 or special requirements placed upon him related to clinical performance, professionalism, medical
5 knowledge, discipline, or for any other reason. The Applicant included his own explanation of
6 his performance and the events that occurred during his participation in the Program.

7 19. On or about June 19, 2017, Applicant submitted to the Board a form entitled
8 "Explanation for Application Question." The form related to question 25, which was contained
9 within the heading "Unusual Circumstances," and dealt with Applicant's taking a leave of
10 absence from the Program. The Applicant included his own explanation of his leave of absence.

11 20. The Program provided the Board with documentation of the Program's concerns with
12 the Applicant's competence. The Applicant provided the board with his own explanation of his
13 performance and the events that occurred during his participation in the Program. The
14 documentation provided by the Program indicate that attending physicians expressed concern for
15 Applicant's ability to make patient care decisions without guidance and the poor quality of his
16 medical judgment and insight. Applicant was placed on informal remediation on January 30,
17 2017, due to concerns about his competency in several of the six core competencies
18 (Professionalism, Systems-Based Practice, Patient Care, Medical Knowledge, Interpersonal and
19 Communications Skills). Applicant failed to show progress while on remediation and continued
20 to demonstrate difficulty obtaining the skills necessary to care for patients. The Program placed
21 Applicant on Probation on June 7, 2017 and received a modified schedule to provide for more
22 direct supervision. Specific examples of Applicant's performance concerns include, but are not
23 limited to the following:

- 24 A. Poor medical judgment;
- 25 B. Inadequate medical knowledge and insight;
- 26 C. Applicant failed to identify and treat acutely decompensated patients in a timely
27 fashion;
- 28 D. Lack of adequate clinical skills placing patient's safety at risk;

- 1 E. Inadequate understanding and recollection of patient care plans in progress;
- 2 F. Lack of adequate clinical skills requiring a modified resident schedule to
- 3 accommodate additional supervision in excess of the normal level of supervision provided to a
- 4 second year resident in internal medicine;
- 5 G. Failure to progress after being placed on academic remediation.
- 6 H. Failure to document adequate and accurate discharge summaries;
- 7 I. Difficulty recognizing the separate parts of a patient's presentation;
- 8 J. Failure to research medical issues related to patient care;
- 9 K. Inability to adequately gather and interpret data in the care and treatment of
- 10 patients;
- 11 L. Inability to adequately formulate independent assessments and plans regarding
- 12 patient care;
- 13 M. Inability to adequately obtain relevant and accurate patient information;
- 14 N. Providing false information during presentations to his attending physicians;
- 15 O. Communicating incorrect information to patients;
- 16 P. Inability to adequately manage and escalate care in patients with sepsis;
- 17 Q. Inability to recognize ECG abnormalities requiring urgent cardiac evaluation;
- 18 R. Inability to identify the appropriate consultative services for a patient's clinical
- 19 condition;
- 20 S. Inability to adequately modify the differential diagnosis and care plan as
- 21 appropriate;
- 22 T. Inability to adequately stabilize patients with urgent or emergent medical
- 23 conditions and coordinate the transfer of patients to higher levels of care when necessary;

24 21. On or about November 13, 2017, the Board denied Applicant's application.

25 22. The Board's review of Applicant's Application, the reports from his Program, along

26 with Applicant's explanation of his performance and the events that occurred during his

27 participation in the Program, demonstrated serious deficiencies. Moreover, these sources

28 ///

1 demonstrated that the Applicant was unable to remediate these serious deficiencies despite being
2 afforded opportunities to do so.

3 23. On or about January 2, 2018, Applicant requested an administrative hearing to contest
4 the denial of his application.

5 24. Applicant's acts and/or omissions set forth above, were substantially related to the
6 qualifications, functions, or duties of a physician and surgeon.

7 25. Applicant's acts and/or omissions set forth in paragraphs 12 through 24, inclusive,
8 above, whether proven individually, jointly, or in any combination thereof, constitute
9 unprofessional conduct, in violation of section 475, subdivision (a)(4), section 480, subdivision
10 (a)(3), section 2221, and section 2234, subdivision (a). Therefore, cause for denial of the
11 Application exists.

12 SECOND CAUSE FOR DENIAL OF APPLICATION

13 (Incompetence)

14 26. Applicant's application is subject to denial under section 475, subdivision (a)(4),
15 section 480, subdivision (a)(3), section 2221, and section 2234, subdivision (d), on the grounds
16 that Applicant has demonstrated conduct which, if done by a licensee, would be grounds for
17 suspension or revocation of a license, i.e., unprofessional conduct and/or conduct which indicates
18 an unfitness to practice medicine, and incompetence. The circumstances are set forth above in
19 paragraphs 12 through 24, which are incorporated as if set forth fully herein.

20 27. Applicant's acts and/or omissions set forth in paragraphs 12 through 24, inclusive,
21 above, whether proven individually, jointly, or in any combination thereof, constitute
22 incompetence, in violation of section 475, subdivision (a)(4), section 480, subdivision (a)(3),
23 section 2221, and section 2234, subdivision (d). Therefore, cause for denial of the Application
24 exists.

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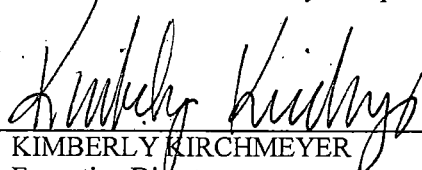
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Denying the application of Agustin Morales for a Physician's and Surgeon's Certificate;
2. If issued a probationary license, ordering Applicant to pay the Medical Board of California the costs of probation monitoring; and,
3. If placed on probation, revoking, suspending or denying approval of the Applicant's authority to supervise physician assistants and advanced practice nurses; and,
4. Taking such other and further action as deemed necessary and proper.

DATED: March 14, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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